

SENATE BILL NO. 154

INTRODUCED BY E. STONINGTON

BY REQUEST OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY

RESTRUCTURING

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ELECTRICAL ENERGY; PROVIDING FOR THE DEFAULT SUPPLIER'S RECOVERY OF ELECTRICITY SUPPLY COSTS; DEFINING "ELECTRICITY SUPPLY COSTS"; REQUIRING THAT THE PUBLIC SERVICE COMMISSION USE AN ELECTRICITY COST RECOVERY MECHANISM THAT ENSURES THAT ALL PRUDENTLY INCURRED ELECTRICITY SUPPLY COSTS ARE FULLY RECOVERABLE IN RATES; REQUIRING THAT THE COMMISSION ESTABLISH A METHOD TO PROVIDE FOR THE FULL RECOVERY OF ELECTRICITY SUPPLY COSTS THAT EXTEND BEYOND THE END OF THE TRANSITION PERIOD; REQUIRING THAT THE COMMISSION ESTABLISH DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT RULES THAT PRESCRIBE A METHODOLOGY AGAINST WHICH THE DEFAULT SUPPLIER'S ELECTRICITY SUPPLY ACTIONS CAN BE PERFORMED AND REVIEWED BY THE COMMISSION; AMENDING SECTIONS 69-8-103 AND 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 69-8-103, MCA, is amended to read:

**"69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

- 1 (3) "Board" means the board of investments created by 2-15-1808.
- 2 (4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or  
3 intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.
- 4 (5) "Cooperative utility" means:
- 5 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
- 6 (b) an existing municipal electric utility as of May 2, 1997.
- 7 (6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana,  
8 pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single  
9 retail electric customer or consumer with a single individual load.
- 10 (7) "Customer-generator" means a user of a net metering system.
- 11 (8) "Default supplier" means a distribution services provider or a person that has received a default  
12 supplier license from the commission.
- 13 (9) "Distribution facilities" means those facilities by and through which electricity is received from a  
14 transmission services provider and distributed to the customer and that are controlled or operated by a  
15 distribution services provider.
- 16 (10) "Distribution services provider" means a utility owning distribution facilities for distribution of  
17 electricity to the public.
- 18 (11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and  
19 marketers, offering to sell electricity to retail customers in the state of Montana.
- 20 (12) (a) "Electricity supply costs" means actual costs of the electricity. Actual costs include fuel, ancillary  
21 service costs, transmission costs including congestion and losses, and any other costs directly related to the  
22 purchase of electricity and management of electricity costs or a related service.
- 23 (b) Revenue from the sale of surplus electricity must be deducted from the costs included under  
24 subsection (12)(a). Total transmission costs are recoverable only once in electricity supply costs.
- 25 (c) The terms used in this subsection (12) must be construed according to industry standards.
- 26 ~~(12)~~(13) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that  
27 authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.
- 28 ~~(13)~~(14) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
29 limited to:
- 30 (i) distribution;

1 (ii) connection;  
2 (iii) disconnection; and  
3 (iv) termination rates and charges that are authorized by the commission in a financing order to permit  
4 recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs  
5 and of acquiring transition property through a plan approved by the commission in the financing order, including  
6 the costs of issuing, servicing, and retiring transition bonds.

7 (b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must  
8 include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery  
9 period is modified by the transactions approved in the financing order.

10 ~~(14)~~(15) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission,  
11 distribution, and unregulated retail energy services assets and operations.

12 ~~(15)~~(16) "Interested person" means a retail electricity customer, the consumer counsel established in  
13 5-15-201, the commission, or a utility.

14 ~~(16)~~(17) "Large customer" means, for universal system benefits programs purposes, a customer with  
15 an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for  
16 that individual load.

17 ~~(17)~~(18) "Local governing body" means a local board of trustees of a rural electric cooperative.

18 ~~(18)~~(19) "Low-income customer" means those energy consumer households and families with incomes  
19 at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

20 ~~(19)~~(20) "Net metering" means measuring the difference between the electricity distributed to and the  
21 electricity generated by a customer-generator that is fed back to the distribution system during the applicable  
22 billing period.

23 ~~(20)~~(21) "Net metering system" means a facility for the production of electrical energy that:

- 24 (a) uses as its fuel solar, wind, or hydropower;  
25 (b) has a generating capacity of not more than 50 kilowatts;  
26 (c) is located on the customer-generator's premises;  
27 (d) operates in parallel with the distribution services provider's distribution facilities; and  
28 (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

29 ~~(21)~~(22) "Nonbypassable rates or charges" means rates or charges that are approved by the commission  
30 and imposed on a customer to pay the customer's share of transition costs or universal system benefits

1 programs costs even if the customer has physically bypassed either the utility's transmission or distribution  
2 facilities.

3 ~~(22)~~(23) "Pilot program" means a program using a representative sample of residential and small  
4 commercial customers to assist in developing and offering customer choice of electricity supply for all residential  
5 and commercial customers.

6 ~~(23)~~(24) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,  
7 chapter 3, on May 2, 1997, including the public utility's successors or assignees.

8 ~~(24)~~(25) "Qualifying load" means, for payments and credits associated with universal system benefits  
9 programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory  
10 in which the customer qualifies as a large customer.

11 ~~(25)~~(26) "Small customer" means a residential customer or a small commercial customer who has an  
12 individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or  
13 a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public  
14 utility distribution services provider that has opened access on its distribution system pursuant to Title 35,  
15 chapter 19, or this chapter.

16 ~~(26)~~(27) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents,  
17 and other entities acting for the benefit of that holder.

18 ~~(27)~~(28) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
19 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer  
20 that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds  
21 must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

22 ~~(28)~~(29) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay  
23 the customer's share of transition costs.

24 ~~(29)~~(30) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when  
25 a utility customer does not have any liability for payment of transition costs.

26 ~~(30)~~(31) "Transition costs" means:

27 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs of  
28 capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring  
29 retail open access or customer choice;

30 (b) those costs that include but are not limited to:

1 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
2 be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan  
3 and conservation investments made prior to universal system benefits charge implementation;

4 (ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

5 (iii) existing generation investments and supply commitments or other obligations incurred before May  
6 2, 1997, and costs arising from these investments and commitments;

7 (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase  
8 contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition  
9 bonds; and

10 (v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated  
11 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

12 ~~(31)~~(32) "Transition period" means the period ending July 1, 2007.

13 ~~(32)~~(33) "Transition property" means the property right created by a financing order, including without  
14 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
15 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that  
16 are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition  
17 amounts that are authorized by the commission in the financing order to recover transition costs and the costs  
18 of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property,  
19 including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition  
20 property before the utility's sale or transfer or any other right created under this section or created in the financing  
21 order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

22 ~~(33)~~(34) "Transmission facilities" means those facilities that are used to provide transmission services  
23 as determined by the federal energy regulatory commission and the commission.

24 ~~(34)~~(35) "Transmission services provider" means a person controlling or operating transmission facilities.

25 ~~(35)~~(36) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on  
26 a customer to pay the customer's share of universal system benefits programs costs.

27 ~~(36)~~(37) "Universal system benefits programs" means public purpose programs for:

28 (a) cost-effective local energy conservation;

29 (b) low-income customer weatherization;

30 (c) renewable resource projects and applications, including those that capture unique social and energy

- 1 system benefits or that provide transmission and distribution system benefits;
- 2 (d) research and development programs related to energy conservation and renewables;
- 3 (e) market transformation designed to encourage competitive markets for public purpose programs; and
- 4 (f) low-income energy assistance.
- 5 ~~(37)~~(38) "Utility" means any public utility or cooperative utility."
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7 **Section 2.** Section 69-8-210, MCA, is amended to read:

8 **"69-8-210. Public utilities -- electricity supply.** (1) On the effective date of a commission order  
9 implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation  
10 assets from the rate base.

11 (2) During the transition period, the commission may establish cost-based prices for electricity supply  
12 service for customers that do not have a choice of electricity supply service or that have not yet chosen an  
13 electricity supplier.

14 (3) ~~If the transition period is extended, then the~~ The customers' distribution services provider shall:

15 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term  
16 of not more than 3 years; or

17 (b) purchase electricity from the market; and

18 (c) use a mechanism that recovers electricity supply costs in rates ~~to ensure that~~ as provided in  
19 subsection (4) so that those costs are fully recovered.

20 (4) (a) The commission shall use an electricity cost recovery mechanism that ensures that all prudently  
21 incurred electricity supply costs are fully recoverable in rates.

22 (b) The cost recovery mechanism must provide for prospective rate adjustments for cost differences  
23 resulting from cost changes, load changes, and the time value of money on the differences.

24 (c) In reviewing whether electricity supply costs were prudently incurred, the commission shall consider  
25 only those facts that were known or should reasonably have been known by the default supplier at the time the  
26 default supplier entered into an energy supply contract.

27 (d) The commission shall establish a method to provide for the full recovery of electricity supply costs  
28 that extend beyond the end of the transition period.

29 (e) The commission shall establish default supply resource planning and procurement rules that  
30 prescribe a methodology, in sufficient detail, against which the default supplier's electricity supply actions can

1 be performed and reviewed by the commission. ~~(4)~~(5) If a public utility intends to be an electricity supplier  
2 through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to  
3 69-8-404."

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5 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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